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No. 99-1133

Supreme Court, U.S.
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In The
Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

v.

SCOTT D. BOYER,
Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPPOSITION TO PETITION FOR CERTIORARI

This Honorable Court should deny the Petition because the case decided below was a very narrow case with very minor precedential effect. The case was so narrow that the court for the Third Appellate District of Illinois made a point of indicating how narrow its decision was in footnote 2 of its decision concerning this case, and also within the decision itself at *People v. Boyer*, 305 Ill. App. 3d 374, 378, 713 N.E. 2d 655, 658 (3rd Dist. 1999). There are only two rules of law that can be taken from the Third District's decision; First, when applying the test set down in *Arizona v. Evans*, 514 U.S. 1, 115 S. Ct. 1185, 131 L. Ed. 2d 34 (1995), to determine whether or not evidence should be suppressed as the result of an improper warrant, prosecutors, unlike court clerks and judges, are part of the law enforcement team engaged in the often competitive enterprise of ferreting out crime with a stake in the outcome of particular criminal prosecutions. *Boyer*, 305 Ill. App. 3d at 379, 713 N.E. 2d at 658. Second, when considering whether or not the good faith exception to the exclusionary doctrine applies, the good faith of the parties procuring the warrant and holding out its continued validity is at issue, not the good faith of the officer, who completely ignorant to the circumstances surrounding the warrant, serves the warrant. *Boyer*, 305 Ill. App. 3d at 379, 713 N.E. 2d at 659.

The Third Appellate District of Illinois was correct in its determination that the error committed in this case was prosecutorial error, that prosecutors are part of the law enforcement team under the *Evans* analysis, and that there would be a deterrent effect in suppressing evidence improperly obtained due to prosecutorial error. The record supports the fact that this was an instance of prosecutorial error given the procedures followed in Lee

County for recalling warrants in circumstances such as Scott Boyer's. The State's argument that this was judicial error and that the judge had the information necessary to notice the outstanding warrant in front him at the time is unsupported by the record. The lack of support for the State's contention is mentioned by the Third District Appellate Court in *Boyer*, 305 Ill. App. 3rd at 380, 713 N.E. 2d 655 at 659. In our adversarial system, prosecutors are certainly not like the impartial judges and clerks of the court system. They are members of the law enforcement team with a stake in the outcome of particular criminal prosecutions. Finally, as the Third District Court of Appeals for the State of Illinois in footnote 4 of its decision pointed out, in this case, imposing the exclusionary rule will provide prosecutors with an incentive to keep accurate records. *Boyer*, 305 Ill. App. 3rd at 379, 713 N.E. 2d at 659.

The decision concerning the good faith exception to the exclusionary doctrine is an independent question of Illinois State Law and should not be reviewed by this court. The Illinois legislature has codified the good faith exception to suppression of evidence at 725 ILCS 5/114-12 (West 1997). This Illinois statute defines the good faith exception to suppression of evidence in Illinois. Further, the Third District relied on *People v. Turnage*, 162 Ill 2d 299, 642 N.E.2d 1235 (1994), Illinois case law, in evaluating the good faith exception arguments made to it. The Illinois legislature has chosen to define the amount of good faith it will extend law enforcement in protecting the fruits of illegal searches. It is up to the Illinois Courts to interpret Illinois statutes. The good faith exception in this case is not an appropriate issue for federal review by this Court.

COUNTER STATEMENT OF THE CASE

The factual scenario presented by the Petitioner is a fair and accurate accounting of both the facts and the procedural disposition of this case.

REASONS FOR DENYING THE WRIT

I. Under the test established by this Court in *Arizona v. Evans*, exclusion of evidence obtained as the result of prosecutorial error in failing to have a warrant recalled is proper.

In *Arizona v. Evans*, 514 U.S. 1, 115 S. Ct. 1185, 131 L. Ed. 2d 34 (1995), this Court addressed whether or not application of the exclusionary rule would have a deterrent effect on court clerks when court clerks committed errors in failing to recall warrants. In reaching its decision, the Court used the law enforcement team analysis. *Id.*, 514 U.S. at 15, 115 S. Ct. at 1193. The Court determined the court clerks were more like the magistrate in *United States v. Leon*, 468 U.S 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984), than police officers because they are not "adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime [...] they have no stake in the outcome of particular criminal prosecutions." *Evans*, 514 U.S. at 15, 115 S. Ct. at 1193.

In the case at hand, the Third District Appellate Court for the State of Illinois correctly determined that this was a case involving prosecutorial error in failing to recall a warrant. This finding is supported by the uncontroverted testimony, via affidavit, of the Lee County State's Attorney's office and Judge Martin Hill in Lee County. *People v. Boyer*, 305 Ill. App. 3d 374, 378, 713 N.E. 2d 655, 658 (3rd Dist. 1999). The Third District Appellate Court was also correct in its assessment that prosecutors are part of the law enforcement team engaged in the often competitive enterprise of ferreting out crime. *Id.*, 305 Ill. App. 3d at 379, 713 N.E.2d at 658. Finally, because they are part of the law enforcement team, application of the exclusionary doctrine does have a deterrent effect on

prosecutors, even when the errors are due to negligence rather than intentional. *Id.*, 305 Ill. App. 3d at 379, 713 N.E. 2d at 659 (footnote 4).

A. The error committed in this case was prosecutorial error, not judicial error.

In determining who was responsible for the error that resulted in an arrest warrant being held out as valid in *Evans*, this Court looked to the testimony in the record of the Chief Clerk of the court in question, describing the process by which warrants were recalled in that jurisdiction. In *Evans*, from that testimony, it was evident the error was on the part of the court clerk, who failed to notify the Sheriff's office, as local custom dictated. 514 U.S. at 5, 115 S. Ct. at 1188. In the instant case, as indicated by the Third District Appellate Court for the State of Illinois, the uncontested local custom in Lee County at the time in question was for the State's Attorney to inform the sitting Judge that there was an outstanding warrant when a person appeared before the court. *People v. Boyer*, 305 Ill. App. 3d 374, 378, 713 N.E. 2d 655, 658 (3rd Dist. 1999). Given the procedure in Lee County, the judge depended upon the State's Attorney to notify the court of outstanding warrants that needed to be recalled. *Id.* This is not a case of judicial error as alleged by the State in its Petition for Writ. On page 9 of its Petition, the State points out that the Judge had the docket sheet in front of him and it was ultimately his responsibility to look at the docket sheet and recall the warrant. This contention is unsupported by the record. As the Third District Appellate Court for the State of Illinois pointed out, the record does not support the allegation that the docket sheet was in front of the judge. *Boyer*, 305 Ill. App. 3d at 379, 713 N.E. 2d at 659. Further, the allegation that it was ultimately the judge's responsibility to notice the outstanding warrant and recall it is contrary to the

uncontested affidavits from both Judge Martin Hill of Lee County and Assistant State's Attorney William Brozovitch of Lee County. Given the uncontroverted procedure in Lee County, the failure to recall the warrant can only be classified as prosecutorial error.

B. Prosecutors are part of the law enforcement team, engaged in the competitive enterprise of ferreting out crime, with a stake in the outcome of particular criminal prosecutions.

In *Arizona v. Evans*, this Court differentiated between two classes of actors in determining whose errors concerning mishandling of warrants should result in the application of the rule of exclusion. 514 U.S. at 15, 115 S. Ct. at 1193.

State's attorneys and their assistants are adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime, with a stake in the outcome of particular prosecutions, or if they are like neutral judges and magistrates. *Id.*

State's attorneys are not neutral parties like the magistrates, judges and court clerks considered in *Evans*. Unlike these judicial officials, the State's Attorney does not have a neutral interest in the outcome of criminal prosecutions. The State's Attorney is a constitutional officer, his office is part of the executive branch of state government, and all the powers exercised are executive powers. *People v. Thompson*, 88 Ill. App. 3d 375, 410 N.E.2d 600 (4th Dist. 1980); *People v. Vaughn*, 49 Ill. App. 3d 37, 363 N.E.2d 879 (5th Dist. 1977). A State's Attorney's role as an "officer of the court" is different from being a judicial officer. Judges are members of the Judicial branch. Court Clerks fall under their dominion. Illinois Constitution Article VI, §18 (West 1997). The State's Attorneys on the other hand are sworn in and given their power by the

Governor, the head of the executive branch. 55 ILCS 5/3-9001 (West 1997). As officers of the executive branch of government, the State's Attorney and the police both act to enforce the laws of the state. 55 ILCS 5/3-9004 (West 1997).

Given a State's Attorney's executive role, and his or her participation in an adversarial system, it is clear that State's Attorneys have an interest in ferreting out crime, and as the office responsible for prosecuting the crime, an interest in the outcome of each particular prosecution. The State's Attorney's role in the adversarial process as a competitor representing one side provides a critical distinction from judges and court clerks whose role in the same process is inherently neutral. The *Evans* Court found it critical that the Court Clerks in question had no particular interest in the outcome of criminal prosecutions. 514 U.S. at 15, 115 S. Ct. at 1193. The reason for the existence, in large part, of the office of State's Attorney requires the interest in the outcome of criminal prosecutions that supports treating the office of State's Attorney more like offices of Law Enforcement and less like neutral offices of judges and magistrates. It is the State's Attorney, after all, that finally determines which infractions will be prosecuted and plays the final role in enforcing the law. 55 ILCS 5/3-9004 (West 1997).

State's Attorneys also take an active role in investigating criminal activity with the police. For example, State's Attorneys and their assistants can participate in such activities as interrogation and the taking of statements. *See generally People v. Smith*, 152 Ill.2d 229, 604 N.E.2d 858 (1992); *People v. Green*, 179 Ill. App. 3d 1, 535 N.E.2d 413 (1st Dist. 1989); *People v. Williams*, 161 Ill.2d 1, 641 N.E.2d 296 (1994); *People v. Thompkins*, 121 Ill.2d 401, 521 N.E.2d 38 (1988). It is also not unheard of for prosecutors to assist police in

drafting and procuring search warrants. *United States v. Tarazon-Silva,* 960 F. Supp. 1152 (W.D.Tex. 1997).

The governmental position of the office of State's Attorney, its duties, its role in the adversarial judicial system, and the activities the office may engage in to investigate crime show that the office of State's Attorney is something quite different from the Judicial offices held in *Evans* to be beyond the application of the rule of exclusion. State's Attorneys and their assistants are adjuncts to the law enforcement team, often participating directly in the process, engaged in the often competitive enterprise of ferreting out crime. Further more, the State's Attorney has a stake in the outcome of each particular criminal prosecution.

C. Enforcement of the exclusionary rule when evidence is improperly obtained as a result of prosecutorial error will have a deterrent effect on prosecutorial conduct.

Evans stands for the proposition that as a rule, if a part of the law enforcement team makes an error resulting in an illegal search, there will be a deterrent effect if the rule of exclusion is applied to evidence obtained as a result of that search. 514 U.S. at 15, 115 S. Ct. at 1193. The Petitioner makes much ado about the fact that the search was conducted by an officer in another county. (Petition for Writ, 15-16). This, however, overlooks the fact that it is the People of the State of Illinois that are represented by all the prosecutors and police units involved, and not the People of Whiteside County or the People of Lee County exclusively. Also, it is imaginable that in a situation such as this one, evidence illegally obtained in Whiteside County by a Whiteside County officer, if not suppressed, could be used to violate a probation in Lee County.

The Illinois Supreme Court has acknowledged that suppression of evidence has a deterrent effect on prosecutorial misconduct. *People v. Turnage*, 162 Ill. 2d 299, 642 N.E. 2d 1235 (1994). In *Turnage*, evidence was suppressed when the police conducted a search based upon a redundant warrant procured by the State's Attorney's office.

As the Third District Appellate court for the State of Illinois pointed out in the decision below:

> The prosecutor's characterization of his error as an "honest oversight" does not preclude application of the exclusionary rule. The purpose of the exclusionary rule is deterrence (Evans, 514 U.S. at 14, 115 S. Ct. at 1193, 131 L. Ed.2d at 46-47; Turnage, 162 Ill.2d at 312, 205 Ill. Dec. 118, 642 N.E.2d at 1241), which applies not only to intentional and reckless acts, but also to negligent acts. A premise underlying all negligence law is that imposing liability can create an incentive to act with greater care, and suppressing evidence in a case such as this will provide an incentive for prosecutors to keep accurate records. Turnage, 162 Ill. 2d at 312-313, 205 Ill. Dec. 118, 642 N.E.2d at 1241.

Boyer, 305 Ill. App. 3d at 379, 713 N.E.2d at 659 (footnote 4). Prosecutors, like police, need to be reminded from time to time that where constitutional rights are at issue, it is important to maintain a close vigil over procedure.

II. The good faith exception to the exclusionary rule has been addressed by the Illinois Legislature, is a question of independent State law in Illinois, and should not be addressed by this Honorable Court.

Whether or not the good faith exception applies in the case at hand is a question of Illinois State Law. The Illinois Legislature has defined "Good faith" concerning the good faith exception to exclusion of evidence in Illinois at 725 ILCS 5/114-12 (West 1997). In defining "good faith", the legislature has utilized the good faith exclusion adopted by this Court in *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405 (1984). 725 ILCS 5/114-12 (West 1997) permits the State to assert the good faith of an officer's conduct in obtaining evidence pursuant to a facially valid warrant. While the Third District Appellate court for the State of Illinois acknowledges that the Illinois constitutional provisions concerning search and seizure are to be interpreted in the same matter as the 4th Amendment to the United States Constitution, *Boyer*, 305 Ill. App. 3d at 377, 713 N.E.2d at 657 (Footnote 1), *citing, People v. Krueger*, 175 Ill. 2d 60, 675 N.E. 2d 604 (1997), it is important to note that in the *Krueger* case, the Illinois Supreme Court departed from the United States Supreme Court rule in finding part of 725 ILCS 5/114-12 to be unconstitutional. *Krueger*, 675 N.E. 2d at 610. The *Krueger* court did so declaring the Illinois Constitution offered broader protection against unreasonable searches and seizures than the United States Constitution. *Id.* At 611.

In answering the question of good faith in *Boyer*, the Third District Appellate Court for the State of Illinois looked to *People v. Turnage,* 162 Ill. 2d 299, 642 N.E. 2d 1235 (1994). In *Turnage*, the Illinois Supreme Court, considered the good faith exception established in *Leon*

and codified at 725 ILCS 5/114-12 and how it should be applied in cases where the arresting officer on the part of who good faith is claimed did not participate in procuring the warrant he relied upon in making the challenged arrest. In *Turnage*, the court stated that the proper focus for determining the "good faith" exception to the exclusionary rule applies, where an officer executes an arrest warrant he did not procure, is not on the good faith of the executing officer, but upon whether those who procured the warrant and signaled its continued validity to the executing officer harbored an objectively reasonable belief that the warrant was valid. 162 Ill. 2d at 309, 642 N.E. 2d at 1239. The Third District Appellate Court for the State of Illinois looked to whether the State's Attorney's Office in Lee County had a good faith belief that the warrant was valid when they signaled its continued validity after the defendant, Scott Boyer, appeared in court and the warrant should have been quashed. *Boyer*, 305 Ill. App. 3d at 379, 713 N.E. 2d at 659. It determined that the State's Attorney could not signal the continuing validity of the warrant in good faith given their admission that it should have been recalled. *Id.*

In Illinois, the good faith exception to unreasonable search and seizure has been codified and defined by the Illinois legislature. The lower court was mindful of this statute in making its decision, *Id.*, 305 Ill. App. 3d at 377, 713 N.E. 2d at 657, as was the Illinois Supreme Court when it reached its decision in *Turnage*, 162 Ill. 2d at 306, 642 N.E.2d at 1235. If the decisions reached by these courts do not comport with 4th Amendment law, it is because the Illinois Constitution offers greater protections in these areas as evidenced by the Illinois court interpretations of the good faith exception under its statute. The good faith question in Illinois, and in this case specifically, was decided on independent state

grounds and should not be reviewed by this Honorable Court.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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